

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

FILED

2003 MAY -6 A 8: 29

IN RE:

PATHNET OPERATING, INC.,

Case No. 01-12266-SSM

Debtor.

Chapter 7

GORDON P. PEYTON, CHAPTER 7  
TRUSTEE FOR PATHNET OPERATING, INC.,

Plaintiff.

v.

Adv. Pro. No. 03-01149-SSM

BUTCH MAKI & ASSOCIATES,

Defendant.

**ANSWER TO COMPLAINT**

Comes now the defendant, Butch Maki & Associates, by and through its undersigned counsel, Thomas G. Rice, P.C. (Thomas G. Rice) and for answer to the complaint responds as follows:

1. Defendant admits the allegations of paragraph 1, 2, 3, 4, 5, 6, 7 and 8 of the Complaint.
2. With respect to paragraphs 9, 10, 11, 12, 13, 14 and 15 Defendant states that it does not have sufficient knowledge or information of the allegations set forth therein and therefore denies the same.
3. Defendant denies the allegations of paragraph 16.
4. Defendant incorporates by reference its answers to the previous paragraphs set

forth herein in response to Paragraph 17 of the Complaint.

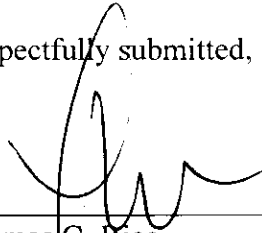
5. Defendant denies the allegations of paragraphs 18, 19 and 20 of the Complaint.
6. With respect to paragraph 21 Defendant incorporates previous answers as set forth herein.
7. Defendant denies the allegations of paragraphs 22 and 23 of the Complaint.
8. Defendant incorporates by reference its answers to the previous paragraphs set forth herein in response to Paragraph 24 of the Complaint.
9. Defendant denies the allegations of paragraph 25 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.
2. The Statute of Limitations has expired for the recovery of any transfer from Debtor to Defendant.
3. Any money paid to Defendant was paid in the ordinary course of business and is therefore not recoverable.
4. Any money paid to Defendant was for consideration of new value and services provided by the Defendant to the Debtor's estate and therefore is not recoverable.
5. Any money paid to Defendant was a post petition transfer made in the ordinary course of business and is therefore not recoverable by the Plaintiff.

Wherefore, Defendant requests that the court dismiss Plaintiff's Complaint and that Defendant be reimbursed for its costs and attorney's fees incurred herein.

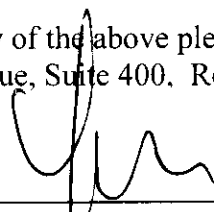
Respectfully submitted,



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Thomas G. Rice  
201 3<sup>rd</sup> Street NW, Ste 1600  
Albuquerque, NM 87102  
(505) 883-5141

I certify that I have mailed a true and correct copy of the above pleading to John J. McJunkin, C/O Piper Rudnick, LLP., 1775 Wiehle Avenue, Suite 400, Reston, VA 20190, this 2 day of May, 2003.



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Thomas G. Rice